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 SAN FRANCISCO HEALTH CARE
 AND REHAB INC.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

JAMIE JOHNSON, individually, on a
 representative basis, and on behalf of all others
 similarly situated;

Plaintiff,

v.

SAN FRANCISCO HEALTH CARE AND
 REHAB INC, a California Corporation; and
 DOES 1 through 20, inclusive;

Defendants.

Case No.

CLASS ACTION

**DEFENDANT SAN FRANCISCO
 HEALTH CARE AND REHAB INC.'S
 NOTICE OF REMOVAL PURSUANT TO
 PREEMPTION 28 U.S.C. §§ 1331 AND
 1441(a) (FEDERAL QUESTION) (LABOR
 MANAGEMENT RELATIONS ACT, 1947
 § 301, 29 U.S.C.A. § 185)**

**(San Francisco County Superior Court Case
 No. CGC 22-597785)**

Complaint Filed: January 24, 2022
 Trial Date: Not Set

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
 DISTRICT OF CALIFORNIA AND TO PLAINTIFF JAMIE JOHNSON AND PLAINTIFF'S
 COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant SAN FRANCISCO HEALTH CARE AND REHAB INC. ("Defendant") hereby removes the court action described below from the Superior Court of the State of California, in and for the County of San Francisco, to the United States District Court for the Northern District of California. The removal is pursuant to 28 U.S.C. §§ 1331 and 1441(a) (preemption under § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185) and complies with 28 U.S.C. § 1446.

This Court's jurisdiction derives from Section 301 of the Labor Management Relations Act, 29 U.S.C. §185(a), as the Complaint alleges claims governed exclusively by the collective bargaining agreement ("CBA") between Defendant and the SEIU, Local 2015, which terms and conditions govern the employment of most of the putative class member/employees and which will require the Court to analyze and interpret the collective bargaining agreements for resolution of several claims. *See* 29 U.S.C. §185(a); *Young v. Anthony's Fish Grottos, Inc.*, 830 F.2d 993, 996-997 (9th Cir. 1987). In support of this Notice of Removal, Defendant submits the Declaration of Michael Turner filed (Turner Declaration, ¶ 1) herewith, and also represents to the Court the following facts:

I. FEDERAL QUESTION JURISDICTION

1. This Court has original jurisdiction over this civil action under 28 U.S.C. § 1331 and is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. Section 1441 (a) because it arises under the Labor Management and Relations Act, ("LMRA") 29 U.S.C.A. § 185, in that this is a civil action that includes claims founded upon a claim or right arising under the laws of the United States, namely, whether Defendant violated, some of the putative class member/employees' overtime, meal, and break rights, rights of its employees covered by provisions of a collective bargaining agreement between Defendant and the SEIU, Local 2015, effective October 1, 2018 through September 30, 2021.

2. Section 301 of the LMRA provides federal jurisdiction over "suits for violation of contracts between an employer and a labor organization." 29 U.S.C. §185(a). "The preemptive force of section 301 is so powerful as to displace entirely any state claim based on a collective bargaining agreement, and any state claim whose outcome depends on analysis of the terms of the agreement."

1 *Young v. Anthony's Fish Grottos, Inc.*, 830 F.2d 993, 997 (9th Cir. 1987) (citations omitted).

2 **3.** “Although the language of § 301 [of the LMRA] is limited to ‘suits for violation of
3 contracts,’ it has been construed quite broadly to cover most state-law actions that require
4 interpretation of labor agreements.” *Associated Builders & Contrs. v. Local 302 IBEW*, 109 F.3d
5 1353, 1356-1357 (9th Cir. 1997) (citing *Allis- Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985)
6 (“When resolution of a state law claim is substantially dependent upon analysis of the terms of an
7 agreement made between the parties in a labor contract, that claim must either be treated as a § 301
8 claim, or dismissed as preempted by federal labor-contract law.” (internal citations omitted)).

9 **4.** Thus, state law causes of action whose outcome depends on analysis of the terms of
10 a collective bargaining agreement are preempted by Section 301 of the LMRA. *Young*, 830 F.2d at
11 997, 999. These claims must be recharacterized as LMRA Section 301 claims and, as such, are
12 removable to federal court. *Associated Builders*, 109 F.3d at 1356; *Young*, 830 F.3d at 997, 1002
13 (because Section 301 of the LMRA completely preempts a state claim, a complaint coming within
14 the scope of the federal claim necessarily arises under federal law and is removable).

15 **5.** Courts find preemption because “the policy in favor of national uniformity in labor
16 law is so powerful that it displaces state law with respect to claims involving the interpretation or
17 enforcement of collective bargaining agreements.” *Associated Builders*, 109 F.3d at 1356 (citing
18 *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 404 (1988)). Such a policy “authoriz[es] the
19 development of federal common-law rules of decision, in large part to assure that agreements to
20 arbitrate grievances would be enforced, regardless of the vagaries of state law and lingering hostility
21 toward extrajudicial dispute resolution.” *Associated Builders*, 109 F.3d at 1356 (citing *Livadas v.*
22 *Bradshaw*, 512 U.S. 107, 114 S. Ct. 2068, 2077 (1994) (footnote omitted)).

23 **6.** Many Section 301 suits “do not assert breach of the collective bargaining agreement
24 and are nevertheless held preempted because they implicate provisions of the agreement.”
25 *Associated Builders*, 109 F.3d at 1357 (emphasis added). That is, parties may not avoid Section 301
26 preemption by artful pleading of a complaint that fails to disclose that the plaintiff’s employment
27 was governed by a collective bargaining agreement. *See Young*, 830 F.3d at 997. In such cases, it is
28 proper for the court to look beyond the face of the complaint to determine whether the state claim

1 is preempted; i.e., to determine whether the outcome of the state claim depends on analysis of the
 2 terms of the collective bargaining agreement. *Young*, 830 F.2d at 997 (district court appropriately
 3 looked beyond face of the complaint in finding Section 301 preemption where complaint did not
 4 reveal that employment was governed by a collective bargaining agreement); *see also Milne*
 5 *Employees Ass'n v. Sun Carriers, Inc.*, 960 F.2d 1401, 1406 (9th Cir. 1991) (plaintiff "cannot avoid
 6 removal by 'artfully pleading' only state law claims that are actually preempted by federal statutes").
 7 The preemptive effect of Section 301 includes related derivative causes of action in a complaint.

8 7. Defendant and the SEIU, Local entered into successive collective bargaining
 9 agreements. (Turner Declaration, ¶¶ 2 and 9, Defendant's Request for Judicial Notice, **Exh. A**).

10 8. Plaintiff's Complaint alleges that she seeks to represent "All current and former
 11 nonexempt employees employed by Defendants in California during the Relevant Time Period" and
 12 includes causes for a failure to (1) pay minimum wages; (2) pay overtime wages; (3) provide meal
 13 periods; (4) provide rest breaks; (5) timely pay final wages; (6) provide accurate itemized wage
 14 statements; (7) unfair and unlawful competition. (Turner Declaration, ¶¶ 2 and 10, **Exh. C**)

15 9. Plaintiff's Complaint alleges that Defendant violated California Labor Code Section
 16 510 by not providing overtime pay under various employment scenarios (Turner Declaration, ¶ 2,
 17 **Exh. C**, Compl. ¶¶ 49-62)

18 10. Plaintiff's Complaint alleges that Defendant violated California Labor Code Section
 19 512 by not providing meal periods under various employment scenarios. (Turner Declaration, ¶ 2,
 20 **Exh. C**, Compl. ¶¶ 63-73)

21 11. Plaintiff's Complaint alleges that Defendant violated California Labor Code Section
 22 512 by not providing rest breaks under various employment scenarios. (Turner Declaration, ¶ 2,
 23 **Exh. C**, Compl. ¶¶ 74-83)

24 12. Some of the alleged putative class member/employees whom Plaintiff seeks to
 25 represent in this action include putative class member/employees whose terms and conditions of
 26 employment were/are governed by a CBA, which include, among other terms, terms and conditions
 27 governing wages, meal periods, rest periods, off the clock work, overtime, shift differentials and
 28 grievances and arbitrations. (Turner Declaration, ¶¶ 2 and 9, Defendant's Request for Judicial

1 Notice, **Exh. A)**

2 **13.** To the extent that Plaintiff seeks to recover wages interest and penalties under the
3 California Labor Code Section 510 overtime requirements, the California Labor Code explicitly
4 excludes employees governed by collective bargaining agreements from its overtime provisions.
5 Cal. Lab. Code §514; *Curtis v. Irwin Industries, Inc.*, 913 F.3d 1146 (9th Cir. 2019). Labor Code
6 Section 514 provides that Section 510 does "not apply to an employee covered by a valid [collective
7 bargaining agreement] if the agreement expressly provides for the wages, hours of work, and
8 working conditions of the employees, and if the agreement provides premium wage rates for all
9 overtime hours worked and a regular hourly rate of pay for those employees of not less than 30
10 percent more than the state minimum wage." Cal. Lab. Code § 514.

11 **14.** Plaintiff's action for wages, interest and penalties is based upon alleged meal period
12 violations, rest period violations, overtime violations, off the clock work and shift differential
13 violations, among others, which action is substantially dependent upon analysis and interpretation
14 of the CBA as the claim requires a determination of whether the terms of the CBA meet the elements
15 and requirements set forth in Section 512 and Section 514 of the California Labor Code, including
16 the manner in which meal and rest periods are provided and the manner in which disputes are
17 resolved, and including the manner in which overtime is calculated under the CBA. *See* Cal. Labor
18 Code §§512(e), 514.

19 **15.** That is, the outcome of Plaintiff's claims require an analysis of whether the CBA (a)
20 provides for wages, hours of work, and working conditions of employees; (b) provides for meal
21 periods for employees; (c) provides for final and binding arbitration of disputes concerning
22 application of meal period provisions; and (d) provides premium wage rates for all overtime hours
23 worked and a regular hourly rate of pay for those employees of not less than 30 percent more than
24 the state minimum wage. Cal. Labor Code §512(e).

25 **16.** Because Plaintiff's allegations necessarily require an analysis of the terms and
26 conditions of the CBA governing some of the alleged putative class members/employees under Cal.
27 Labor Code §§ 512(e), 514, Plaintiff's claims must be recharacterized as LMRA Section 301 claims
28 and, as such, are removable to federal court. *See Associated Builders & Contrs.*, 109 F.3d at 1356;

1 Declaration of Michael E. Turner as Exhibit B through Exhibit F filed with this Notice.

2 **III. TIMELY REMOVAL**

3 **20.** Plaintiff served the Complaint by substitution on Defendant SAN FRANCISCO
 4 HEALTH CARE AND REHAB INC, a California Corporation, on February 14, 2022. A copy of
 5 the Summons and Complaint was mailed on February 16, 2022. Pursuant to California Code of
 6 Civil Procedure section 415.20, service of Summons in this manner is deemed complete on the 10th
 7 day after the mailing. Plaintiff's Summons is deemed served on February 26, 2022. March 28, 2022
 8 is the thirtieth (30th) day.

9 **21.** This Notice of Removal is timely as it is being filed with this Court and served within
 10 thirty (30) days after the date when Defendant was served with the Summons and Complaint. 28
 11 U.S.C. § 1446, subd. (b)(1).

12 **IV. VENUE**

13 **22.** Venue is proper in this Court because this is the Court for the district embracing the
 14 place where the action is pending in State Court, and this is the judicial district in which the action
 15 arose. 28 U.S.C. §§ 1391(a), 1441(a), (b).

16 **V. CONSENT TO REMOVAL BY REMAINING NAMED/SERVED DEFENDANTS**

17 **23.** Defendant is the only named and served Defendant in Plaintiff's Complaint. Doe
 18 Defendants do not need to be joined in this Notice of Removal. *Fristoe v. Reynolds Metals Co.*, 615
 19 F.2d 1209, 1213 (9th Cir. 1980).

20 **VI. NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING**

21 **24.** There are currently no other related actions or proceedings pending. Plaintiff states
 22 in the Complaint that Plaintiff has given notice to the Labor and Workforce Development Agency
 23 of Labor Code violations and that Plaintiff reserves the right to amend this complaint or bring a
 24 separate complaint for PAGA claims. (Turner Declaration, ¶¶ 2 and 10, **Exh. C**, Compl. ¶ 4) To the
 25 extent Plaintiff does file a separate action, Defendant will see to remove that action as it is based
 26 upon the same facts as set forth in the within Complaint.

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1 **VII. INTRADISTRICT ASSIGNMENT**

2 **25.** Pursuant to Civil L.R. 3-2(d), this action is proper in the San Francisco Division of
3 the Northern District of California because the action arose in the County of San Francisco.

4 **VIII. STATE COURT DOCUMENTS**

5 **26.** Pursuant to the provisions of 28 U.S.C. § 1446(a), Defendant attaches to this Notice
6 by way of the accompanying Declaration of Michael Turner, and incorporates by reference, a true
7 and correct copy of the following documents, which Defendant received in this action:

- 8 A. Summons – Declaration of Michael Turner, **Exhibit B**
9 B. Complaint – Declaration of Michael Turner, **Exhibit C**
10 C. Superior Court Civil Case Cover Sheet – Declaration of Michael Turner, **Exhibit D**
11 D. Alternative Dispute Resolution Program Information Package – Declaration of
12 Michael Turner, **Exhibit E**
13 E. Proof of Service – Declaration of Michael Turner, **Exhibit F**
14 F. Case Management Conference Notice – Declaration of Michael Turner, **Exhibit G**

15 Also attached hereto, and incorporated by reference, is Defendant's Request for Judicial
16 Notice of the CBA between Defendant and the SEIU, Local 2015, effective October 1, 2018 through
17 September 30, 2021. (Declaration of Michael Turner ¶ 9, Request for Judicial Notice, **Exhibit A.**)

18 **IX. NOTICE AND SERVICE**

19 **27.** In accordance with 28 U.S.C. § 1446(d), counsel for Defendant certifies that a copy
20 of this Notice of Removal and all supporting papers will be promptly served on Plaintiff's counsel
21 and filed with the Clerk of San Francisco County Superior Court. Accordingly, all procedural
22 requirements under 28 U.S.C. § 1446 are satisfied.

23 WHEREFORE, Defendant respectfully requests that this action now proceed against
24 Defendant in this Court as an action properly removed.

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1 DATED: March 28, 2022

HANSON BRIDGETT LLP

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3 By: /s/ Michael E. Turner

4 DIANE MARIE O'MALLEY

5 WARREN HODGES

6 MICHAEL E. TURNER

Attorneys for Defendant SAN FRANCISCO

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